

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions for the year 2009**

We are pleased to present the results of our survey for the entire year of 2009, analyzing the legal terms commonly used in venture capital investment transactions in Israeli and “Israeli related” hi-tech companies and comparing these terms to those commonly used in the Silicon Valley, United States.

As you may know from other available surveys of the industry - in 2009 we experienced a steep decrease in the number of venture investments. Therefore, and in order to examine terms of a statistically sufficient number of deals - we chose to issue an annual survey for the whole year of 2009, instead of our quarterly editions, while comparing these deals to the semi-annual results covered by our earlier surveys.

In preparing our survey for the year of 2009, we examined the terms of venture capital investment transactions of Israeli and “Israeli-related” high-tech companies, each for an investment amount of at least US \$500,000. The survey relates only to equity transactions in which venture capital funds participated, and not to bridge loan transactions nor investments made solely by “Angels”.

As always, this survey was produced in coordination with Fenwick & West LLP., a leading Silicon Valley law firm. Our cooperation with Fenwick & West in producing this survey has enabled us also to present the results of their corresponding survey covering Silicon Valley venture capital investment transactions during the surveyed period, and, thus, to draw an interesting comparison between the terms commonly used in Israel and those commonly used in the Silicon Valley.

Conclusions:

The trend of 'tougher-to-the-company' deal terms that we have been witnessing since the second half of year 2008 - continued well into year 2009 and even worsened during such period.

In the Israeli environment, the general economic recession was coupled by the drastic decline in the number of active Israeli venture capital funds as well as the absolute amounts of money available by them for new investments.

The result is reflected in the total low number of venture deals that were closed in 2009, as well as in the number of first round deals that plunged into industry record lows since we started to survey the industry!

This latter finding is clearly expressed in the decline in the number of Series A round investments to 16%, which is the lowest annual rate since the beginning of conducting our survey in 2003! We expect this decrease to significantly affect the Israeli high-tech industry as a whole in upcoming years. Companies that should have presumably been first financed in 2009 would likely have grown to be leaders in their respective fields in the next decade; thus, their failure to obtain financing might impede the growth of the high-tech industry in the long-run.

Additional indications of the tough environment are reflected in the number of deals that include multiple liquidation preference and an increase in the number of "pay to play" provisions, which is a stipulation among investors imposing a "penalty" on those investors who do not continue to participate in subsequent investment rounds of a company.

We hope that you find this survey useful and interesting. **To be included in our email distribution list for future editions of this survey, please go to www.shibolet.com.**

To receive a copy of the Fenwick & West Venture Capital Survey summarizing venture capital terms in the Silicon Valley, please go to www.fenwick.com/vctrends.htm.

For additional information about this survey, please contact Mr. Lior Aviram at L.Aviram@shibolet.com or Ms. Limor Peled at L.Peled@shibolet.com, Tel: +972 (3) 7778333.

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in cooperation with
FENWICK & WEST LLP

**Trends in Legal Terms in Venture Financings
in Israel**

(2009 Annual Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli and Israeli-related technology companies that reported raising money in 2009. Our survey does not include financing rounds of less than US \$500,000. The tables below also show, for purposes of comparison, the results of our previously released surveys.
- **Financing Round** – The financings closed in 2009 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
A	16%	30%	36%	36%	46%	35%	21%	34%	28%
B	24%	30%	27%	32%	18%	27%	28%	27%	22%
C	14%	16%	20%	14%	16%	24%	19%	12%	26%
D	16%	12%	12%	11%	8%	7%	19%	17%	9%
E and higher	30%	12%	5%	7%	12%	7%	13%	10%	15%

- **Price Change** – The financings closed in 2009 and in the periods covered by our previous surveys may be broken down by the directions of the change in price as compared to each company's respective previous round, as follows:

Price Change	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
Down	30%	32%	18%	9%	31%	32%	26%	30%	19%
Flat	17%	14%	0%	6%	4%	6%	9%	4%	16%
Up	53%	54%	82%	85%	65%	62%	65%	66%	65%

The percentages of financing transactions that were down-rounds, broken down by series, were as follows:

Series	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
B	0%	23%	7%	0%	44%	7%	31%	36%	0%
C	60%	29%	0%	25%	25%	54%	27%	20%	33%
D	50%	20%	57%	17%	25%	25%	18%	29%	25%
E and higher	36%	60%	33%	0%	17%	50%	14%	25%	14%

- **Liquidation Preference** – Senior liquidation preferences were used in the following percentages of financings:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
81%	83%	75%	75%	63%	72%	80%	81%	76%

The percentages of financing transactions with senior liquidation preference, broken down by series, were as follows:

Series	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
B	78%	69%	73%	78%	56%	67%	75%	73%	80%
C	100%	86%	73%	63%	50%	77%	73%	100%	75%
D	67%	100%	71%	67%	75%	75%	91%	71%	75%
E and higher	82%	100%	100%	100%	83%	75%	86%	100%	71%

- **Multiple-Based Liquidation Preferences** - The percentage of financing transactions with senior liquidation preferences that included multiple preferences was as follows:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
32%	10%	7%	22%	6%	4%	9%	18%	16%

Of the financings in which there were senior liquidation preferences based on multiples, the range of the multiples may be broken down as follows:

Range of multiples	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
>1x- 2x	75%	100%	100%	83%	100%	100%	100%	75%	25%
>2x - 3x	13%	0%	0%	17%	0%	0%	0%	0%	75%
> 3x	12%	0%	0%	0%	0%	0%	0%	25%	0%

- **Participation in Liquidation** - The percentage of transactions, out of the total number of financing transactions, which included participation rights in liquidation were as follows:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
84%	88%	86%	82%	84%	89%	93%	85%	91%

Out of those financing transactions the terms of which provided for participation, the percentages of those in which no cap was placed on the investors' right to participation were as follows:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
61%	58%	58%	54%	47%	51%	57%	57%	69%

- **Cumulative Dividends and/or Accrued Interest as Part of the Liquidation Preference** – Cumulative dividends and/or accrued interest constituted part of the liquidation preferences in the following percentages of financings:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
38%	58%	64%	63%	58%	56%	56%	68%	78%

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in the second half of 2008 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
Full Ratchet	11%	12%	9%	16%	14%	18%	28%	39%	31%
Weighted Average	89%	88%	91%	82%	78%	82%	65%	61%	65%
None	0%	0%	0%	2%	8%	0%	7%	0%	4%

- **Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in the year 2009 and in the periods covered by our previous surveys may be broken down as follows:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
14%	7%	2%	2%	8%	2%	9%	15%	0%

- **Redemption** – The percentage of transactions in the year 2009 and the periods covered by our previous surveys, out of the total number of financings in each respective period, in which the terms provided for mandatory redemption or redemption at the option of the venture capitalist was as follows:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
19%	12%	11%	25%	8%	18%	14%	20%	17%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in the year 2009 and the periods covered by our previous surveys, out of the total number of financings in each respective period, which involved the conversion of senior securities into more junior securities was as follows:

2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
3%	13%	2%	0%	4%	2%	2%	2%	7%

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Analysis of Legal Terms of Venture Financings
of Israeli Companies
and a Comparison of Those Terms with the Terms of Venture Financings
in the Silicon Valley
(2009 Annual Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli based/related technology companies that reported raising at least \$500,000 in 2009, and compared those terms to the terms of venture financings for technology companies headquartered in the Silicon Valley (the San Francisco Bay Area) that reported raising money in the same period.
- **Financing Round** – The Israeli financings may be broken down according to type of round as follows:
 - Series A – 16% (compared to 15% in the Silicon Valley)
 - Series B – 24% (compared to 26% in the Silicon Valley)
 - Series C – 14% (compared to 29% in the Silicon Valley)
 - Series D – 16% (compared to 15% in the Silicon Valley)
 - Series E and higher – 30% (compared to 15% in the Silicon Valley)
- **Price Change** – The financings during the year 2009 may be broken down by the directions of the change in price as compared to the each company’s respective previous round, as follows:

Price Change	Israel	Silicon Valley
Down	30%	40%
Flat	17%	24%
Up	53%	36%

The percentages of financing transactions that were down-rounds, broken down by series, were as follows:

Series	Israel	Silicon Valley
B	0%	24%
C	60%	43%
D	50%	52%
E and higher	36%	47%

- **Liquidation Preference** – Senior liquidation preferences were used in the following percentages of post-Series A financings:

Israel	Silicon Valley
81%	44%

The percentages of financing transactions senior liquidation preference, broken down by series, were as follows:

Series	Israel	Silicon Valley
B	78%	29%
C	100%	46%
D	67%	57%
E and higher	82%	53%

- **Multiple-Based Liquidation Preference** – The percentages of financing transactions with senior liquidation preferences that included multiple preferences was as follows:

Israel	Silicon Valley
32%	23%

Of the financings in which there were senior liquidation preferences based on multiples, the range of the multiples may be broken down as follows:

Range of Multiples	Israel	Silicon Valley
>1x - 2x	75%	76%
>2x - 3x	13%	21%
>3x	12%	3%

- **Participation in Liquidation** –The percentage of transactions, out of the total number of financing transactions, that provided for participation rights in liquidation were as follows:

Israel	Silicon Valley
84%	51%

Out of those financing transactions the terms of which provided for participation, the percentages of those in which no cap was placed on the investors right to participation were as follows:

Israel	Silicon Valley
61%	60%

- **Cumulative Dividends/Interest Accrual** – Cumulative dividends or interest accruals (which is an Israeli concept similar to cumulative dividends) constituted part of the liquidation preferences under the terms of the following percentages of financings:

Israel	Silicon Valley
38%	5%

- **Anti-dilution Provisions** – The use of anti-dilution provisions in the financings were as follows:

Type of Provision	Israel	Silicon Valley
Full Ratchet	11%	4%
Weighted Average	89%	96%
None	0%	0%

- **Pay-to-Play Provisions** – The use of pay-to-play provisions in the financings was as follows:

Israel	Silicon Valley
14%	13%

- **Redemption** – The percentages of financings providing for either mandatory redemption or redemption at the option of the venture capitalist were as follows:

Israel	Silicon Valley
19%	21%

- **Corporate Reorganizations** – The percentages of post-Series A financings involving a corporate reorganization (conversion of senior securities) were as follows:

Israel	Silicon Valley
3%	8%

For additional information about this report please contact Barry Kramer at 650-335-7278; bkramer@fenwick.com or Michael Patrick at 650-335-7273; mpatrick@fenwick.com at Fenwick & West; or Lior Aviram – l.aviram@shibolet.com or Limor Peled – l.peled@shibolet.com, at Shibolet & Co. 972-3-7778333. To be placed on an email list for future editions of this survey please go to www.fenwick.com/vctrends.htm or to www.shibolet.com.